

96TH CONGRESS
1ST SESSION

H. R. 284

To amend chapters 5 and 7 of title 5 of the United States Code to provide for the award of reasonable attorney fees, expert witness expenses, and other costs reasonably incurred in proceedings before Federal agencies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 15, 1979

Mr. DRINAN introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend chapters 5 and 7 of title 5 of the United States Code to provide for the award of reasonable attorney fees, expert witness expenses, and other costs reasonably incurred in proceedings before Federal agencies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE

4 SECTION 1. This Act may be cited as the "Public
5 Access to Agency Proceedings Act of 1979".

1 PARTICIPATION IN AGENCY PROCEEDINGS

2 SEC. 2. (a) Title 5 of the United States Code is amended
3 by inserting immediately after section 558 of such title the
4 following new section:

5 § 559. Expenses of participation

6 “(a) Any person, whether or not a party, may be
7 awarded reasonable attorney fees, expert witness expenses,
8 and other costs reasonably incurred in connection with par-
9 ticipation in any rulemaking, licensing, adjudicatory, or other
10 proceeding conducted by an agency.

11 “(b) Such person shall receive an award if—

12 “(1) in light of the need for representation of a
13 fair balance of interests, the person has contributed or
14 will contribute to a fair determination of the issues in
15 the proceeding;

16 “(2)(A) the monetary benefit to the person is
17 small in comparison to the costs of effective participa-
18 tion in the proceeding; or

19 “(B) the person does not have sufficient resources
20 to participate effectively in the proceeding without
21 such award; and

22 “(3) the interest represented by that person is not
23 adequately represented by existing parties to the
24 proceeding.

1 “(c) Within thirty days after final disposition by the
2 agency of the matter involved in the proceeding, any person
3 eligible for an award under subsection (b) of this section may
4 file an itemized bill with the Office of Public Participation
5 established by subsection (e) of this section.

6 “(d) At any time prior to or during an agency proceed-
7 ing, any person eligible under subsection (b) of this section
8 may file an itemized bill of estimated interim expenses with
9 the Office of Public Participation established by subsection (e)
10 of this section.

11 “(e)(1) There is established in the Department of Justice
12 the Office of Public Participation (hereinafter in this section
13 referred to as the ‘Office’).

14 “(2) The head of the Office shall be the Administrator.
15 The Administrator shall be appointed by the Attorney Gen-
16 eral for a term of two years. In case of a vacancy in the office
17 of Administrator, the Attorney General may appoint a suc-
18 cessor to fill the office for the remainder of the term. The
19 Administrator may be removed from office by the Attorney
20 General only for good cause. The Administrator may appoint
21 such officers and employees at such salaries, within the limi-
22 tations of appropriations, as are necessary to carry out the
23 functions of the Office.

24 “(3) The Administrator shall prepare and transmit to
25 Congress and the Attorney General an annual report on the

1 awards made under this section and under section 707 of this
2 title. Such report shall contain statistical data and other rele-
3 vant information, set out in appropriate categories, of all
4 agency actions and, on the basis of information which the
5 Administrative Office of the United States Courts shall fur-
6 nish the Office, all civil actions and proceedings, in which
7 such awards were sought or ordered or both.

8 “(4) The Office shall make rules for the determination of
9 awards under this section, and such rules shall set forth the
10 factors to be considered in cases where more than one appli-
11 cant seeks such an award with respect to a single proceeding.

12 “(f)(1) Whenever a person that is eligible under subsec-
13 tion (b) of this section files a bill under subsection (c) or (d) of
14 this section, the Office shall make any appropriate award
15 under this section to such person. In determining whether an
16 award of estimated interim expenses for which a bill is filed
17 under subsection (d) of this section is appropriate, the Office
18 shall consider whether the ability of a person to participate in
19 the proceeding will be significantly impaired without such an
20 award. There shall be no judicial review of an award of esti-
21 mated interim expenses under this section unless the agency
22 agrees to postpone the commencement or continuation of the
23 proceeding with respect to which such award was made. In
24 the case of such judicial review, the reviewing court shall
25 award costs, including reasonable attorney fees, to the pre-

1 vailing party against an agency seeking such review, and
2 may award damages to such party for delay arising out of
3 such review.

4 “(2) The Office may, after notice and an opportunity to
5 be heard, order payment or repayment in whole or in part of
6 the award made under this section in any or all of the follow-
7 ing situations:

8 “(A) Against an agency for good cause shown.

9 “(B) Against any person eligible under subsection
10 (b) of this section, for fraud or misrepresentation.

11 “(C) Against any other party which has acted in a
12 dilatory fashion during the course of the proceedings.

13 “(3) Final action by the Office upon a filed bill for an
14 award under this section shall be completed—

15 “(A) not later than thirty days after the filing of
16 such bill, if filed under subsection (c) of this section;

17 “(B) not later than ten days before the beginning
18 of the agency proceeding, if filed not later than twenty
19 days before the beginning of such proceeding under
20 subsection (b) of this section; and

21 “(C) not later than five days after the filing of
22 such bill, if filed under subsection (c) of this section in
23 cases other than those described in subparagraph (B).

1 “(4) Payment of awards made under this section shall
2 be made by the Office within five days after the final action
3 on the filing by the Office.”.

4 (b) Section 559 of title 5 of the United States Code is
5 redesignated as section 560.

6 (c) The table of sections for chapter 5 of title 5 of the
7 United States Code is amended—

8 (1) by inserting immediately after the item relat-
9 ing to section 558 of such title, the following new
10 item:

“559. Expenses of participation.”; and

11 (2) in the item relating to section 559, by striking
12 out “559” and inserting in lieu thereof “560”.

13 PARTICIPATION IN JUDICIAL REVIEW OF AGENCY

14 PROCEEDINGS

15 SEC. 3. (a) Chapter 7 of title 5 of the United States
16 Code is amended by adding at the end the following new
17 section:

18 “§ 707. Attorney fees and other expenses

19 “(a) In any action or proceeding to review agency
20 action, where the person seeking review substantially pre-
21 vails, either before or after final judgment, the court, in ac-
22 cordance with this section, shall award to such person rea-
23 sonable attorney fees, expert witness expenses, and other
24 costs reasonably incurred in such action or proceeding. Such

1 an award may be taxed against the United States, or a party
2 in accordance with subsection (c) of this section, or both. No
3 stay of the award shall be granted pending appeal from such
4 award.

5 “(b) The court may reduce or deny an award under sub-
6 section (a) of this section on account of any direct monetary
7 benefit secured by or the resources available to the person
8 seeking review.

9 “(c) The court may, after notice and an opportunity to
10 be heard, tax all or a part of an award under subsection (a) of
11 this section—

12 “(A) against an agency for good cause shown; or

13 “(B) against any other party, except a prevailing
14 person seeking review, which has acted in a dilatory
15 fashion during the course of the proceedings.

16 “(d) Payment of the fees, expenses, and other costs
17 under subsection (a) of this section shall be made within five
18 days after the order of the court by the Office of Public Par-
19 ticipation established by section 559(e) of this title. Such
20 Office shall seek reimbursement of the award from the appro-
21 priate agency or party or both.”.

22 (b) The table of sections for chapter 7 of title 5 of the
23 United States Code is amended by adding at the end the
24 following new item:

“707. Attorney fees and other expenses.”.

1 AUTHORIZATION OF APPROPRIATIONS

2 SEC. 4. There are authorized to be appropriated for the
3 purposes of the Office of Public Participation \$10,000,000
4 for the fiscal year ending September 30, 1980, and
5 \$11,000,000 for the fiscal year ending September 30, 1981.

6 CONFORMING AMENDMENT TO TITLE 28 OF THE UNITED
7 STATES CODE

8 SEC. 5. Section 509 of title 28 of the United States
9 Code is amended—

10 (1) by striking out “and” at the end of paragraph

11 (3);

12 (2) by striking out the period at the end of para-
13 graph (4) and inserting “; and” in lieu thereof; and

14 (3) by adding at the end the following:

15 “(5) of the Office of Public Participation.”.

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